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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,521	07/02/2003	Cheryl E. Zemont	0502.003	5288

34282 7590 03/22/2005

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EXAMINER

BROWN, MICHAEL A

ART. UNIT	PAPER NUMBER
	3764

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/612,521	ZEMONT, CHERYL E. <i>CD</i>
	Examiner	Art Unit
	Michael Brown	3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 05 January 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2,4,5,12-14,16 and 19-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 13,14,16,17 and 20 is/are allowed.
- 6) Claim(s) 1,2,4, 5 and 19 is/are rejected.
- 7) Claim(s) 12 and 22 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 5 rejected under 35 U.S.C. 103(a) as being unpatentable over Cassidy in view of Mauch EP '958, as set forth in the previous office action. Cassidy teaches in figure 2 a single node a, that can be used to apply localized pressure to a trigger point using the single node. The nodes are equally spaced apart. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that a single node as disclosed by Cassidy could be used to apply localized pressure to a trigger point of the body because the spacing between the nodes allows only one node to touch the face at one given time.

Claims 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cassidy in view of Mauch EP '958, along with Spoon.

Cassidy discloses in figures 1-5 a method of massaging and a device for massaging, substantially as claimed. Macuh EP '958 teaches in figures 1-2 a method of massaging and a spherical ball 1 having nodes that are substantially cylindrical (fig. 1) and have flat ends (fig. 2). Spoon teaches in figures 1-4 a spherical ball 12 having nodes (20, 24 and 28) that are attached to the ball by a rigid pin 48. It would have been obvious to one having ordinary skill in the art at the time that the invention was made

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that the rigid pin as taught by Spoon could be used to attach the nodes to the ball disclosed by Cassidy and taught by Mauch in order to able to rigidly attach the nodes to the ball. It is old and well known to use press-fitting to attach a node to a ball.

Allowable Subject Matter

Claims 12 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 13-14, 16 and 20 are allowed.

Response to Arguments

Applicant's arguments filed January 5, 2005 have been fully considered but they are not persuasive. Applicant argues that Cassidy does not teach using a single node to apply a localized pressure to a trigger point. However, Cassidy teaches in figure 2 a node a, that can touch the face without the ball touching the face. As for a trigger point, it appears that any portion of the body could be a trigger point. Applicant argues that Cassidy is used knead muscles by having a smooth surface of the sphere contact with convexities of the skin surface, while the protuberance act on the hollows. However, one of ordinary skill in the art would recognized that the protuberance (a on the right side of the ball could touch the face without the ball touching the face). The arguments pertaining to claims 13-14, 16-17 and 20 are moot because these claims have been indicated as being allowable. The rejection of claim 21 was made necessary but the adding of new structure in claim 21. Thus, no argument will be provided for rejected claim 21.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 571-272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Brown
March 15, 2005



MICHAEL A. BROWN
PRIMARY EXAMINER